

June 13, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0400565**

GARY NEUBAUM
Code Enforcement Appeal

Location: 11912 – 11th Place Southwest

Appellant: Gary Neubaum
represented by **John O'Rourke**, Attorney at Law
618 South 223rd, Suite 6
Des Moines, Washington 98198
Telephone: (206) 824-2802

King County: Department of Development and Environmental Services,
represented by **Al Tijerina**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6653
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal; extend date of compliance
Department's Final Recommendation:	Deny appeal; extend date of compliance
Examiner's Decision:	Deny appeal; extend date of compliance

EXAMINER PROCEEDINGS:

Hearing Opened:	November 29, 2005
Hearing Continued:	November 29, April 11 and May 9, 2005
Hearing Closed:	May 30, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On September 23, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Gary Neubaum that alleged code violations at property located at 11912 – 11th Place Southwest. The Notice and Order cited Mr. Neubaum and the property with two violations of county code: a) accumulation of inoperable vehicles and vehicle parts throughout the exterior premises, parking/storage of vehicles on non-impervious (unimproved) surfaces, and maintaining a number of vehicles on the property in excess of the code limit (six vehicles); and b) accumulation of assorted rubbish, salvage and debris. Such violations were required to be corrected by November 23, 2005.
2. Mr. Neubaum filed a timely appeal of the Notice and Order, claiming that the Notice and Order allegation that there was an accumulation of rubbish, salvage and debris on the property was incorrect and insufficiently specific; that the property does not contain more than the maximum number of vehicles allowed (dependent on sale of a van, there will be six operable vehicles on the property); and that the county is engaging in inequitable selective enforcement.
3. Through the hearing process, including lengthy continuances from November 2005 until May 30, 2006, the Appellant has done much to achieve compliance by correction of the alleged violations on the property. The inoperable vehicle issue has been resolved to DDES's satisfaction. The Appellant has stipulated to the remaining violations as stated in the hearing, naming rubbish and car part items and the need to improve parking surfaces. The Appellant has not stipulated that more vehicles are parked on the property than permitted by code. The Appellant and DDES are in agreement that an additional 30-day period is appropriate for conducting the necessary final cleanup and removal of the pertinent items, and achieving compliance with the Notice and Order.
4. As noted, the inoperable vehicle issue has been resolved to DDES's satisfaction. The evidence in the record demonstrates that car parts as well as rubbish, salvage and debris are still stored on the exterior of the property, and that vehicles are not all parked on sufficiently impervious surfaces as required by county code. The allegation that more than the number of vehicles permitted by code is parked on the property has not been proven by the evidence submitted.
5. Except for the allegation that more than the number of vehicles permitted by code is parked on the property, the preponderance of the evidence in the record supports a finding that the charges of code violation in the Notice and Order are correct, although the inoperable vehicles component has been resolved.
6. Any complaint about unfair or inequitable county enforcement is a matter of legal equity, over which the Examiner has no jurisdiction (see Conclusion 1), or are matters under DDES administrative authority and responsibility in the conduct of its enforcement activities.

CONCLUSIONS:

1. The Appellant's argument that it is unfair for the County to engage in code enforcement on the subject property when other properties and entities have similar violations is an equity issue over which the Examiner has no authority. It is essentially a common law claim of *equitable estoppel*, that the county should be barred from enforcing the matters at hand because of unequal or unfair treatment. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under "black letter" law, *i.e.*, law enacted in statutory or ordinance form. Washington

case law limits the Examiner's exercise of common law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] Any equity claim would have to be brought in a court of law.

2. As the accumulation of vehicle parts and parking of vehicles on non-impervious surfaces and the accumulation of rubbish, salvage and debris on the property have been conducted on the property in violation of county code as cited, those violation charges of the Notice and Order are correct and are sustained on appeal.
3. Since the deadline for compliance in the Notice and Order has been obviated by the time taken on appeal, including the continuances, the Examiner shall impose a new deadline for correction.

DECISION:

The appeal is DENIED except that the Notice and Order deadline for regulatory compliance is revised as stated in the following order.

ORDER:

1. Remove all remaining rubbish, salvage and debris from the exterior of the premises *by no later than July 13, 2006*, so that the property complies with county code in such respect.
2. Remove all vehicle parts from the exterior of the premises or store these vehicles and materials within a fully enclosed building, and cease parking/storage of vehicles on non-impervious surfaces, *by no later than July 13, 2006*.
3. No penalties shall be assessed against the Appellant and the property if all the deadlines stated within the above Conditions 1 and 2 above are met. If any of the deadlines is not met, DDES may impose penalties against the Appellant and the property retroactive to the date of this order.

ORDERED this 13th day of June, 2006.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 13th day of June, 2006 via certified mail to the following:

Gary Neubaum
11912 - 11th Pl. SW
Seattle, WA 98146

John O'Rourke
Attorney at Law
P.O. Box 98741
Des Moines, WA 98198

TRANSMITTED this 13th day of June, 2006, to the following parties and interested persons of record:

Gary Neubaum
11912 - 11th Pl. SW
Seattle WA 98146

John O'Rourke
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PO Box 98741
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Toya Williams
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NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE NOVEMBER 29, 2005; MAY 9, 2006; AND MAY 30, 2006, PUBLIC HEARING
ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO.
E0400565.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Al Tijerina, representing the Department; and John O'Rourke representing the Appellant, and Appellant Gary Neubaum.

The following Exhibits were offered and entered into the record on May 30, 2006:

Exhibit No. 1	DDES staff report for November 29, 2005
Exhibit No. 2	Copy of Notice and Order issued September 23, 2005
Exhibit No. 3	Copy of Notice and Statement of Appeal received October 11, 2005
Exhibit No. 4	Copies of codes cited in the Notice and Order
Exhibit No. 5A-D	Photographs (5 pages of color copies) of subject property taken by Jeri Breazeal October 14, 2004
Exhibit No. 6	Letter from Al Tijerina to John O'Rourke dated March 22, 2006

PTD:gao
E0400565 RPT